

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAMES D.,

Plaintiff,

v.

**8:20-CV-1544
(FJS/DEP)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant

APPEARANCES

OF COUNSEL

**LEGAL AID SOCIETY OF
NORTHEASTERN NEW YORK, INC.**
100 Court Street
Plattsburgh, New York 12901
Attorneys for Plaintiff

ADAM T. DEFAYETTE, ESQ.

SOCIAL SECURITY ADMINISTRATION
J.F.K. Federal Building, Room 625
15 New Sudbury Street
Boston, Massachusetts 02203
Attorneys for Defendant

JAMES J. NAGELBERG, ESQ.

SCULLIN, Senior Judge

ORDER

Plaintiff brought this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of a final decision of Defendant Commissioner denying his application for Social Security Disability benefits. *See* Dkt. No. 1. On May 6, 2021, Plaintiff filed his memorandum of law in support of his motion for judgment on the pleadings, *see* Dkt. No. 10; and, on August 16, 2021, Defendant Commissioner filed her memorandum of law in support of her motion for judgment on the pleadings, *see* August 16, 2021. After a thorough review of the record, Magistrate Judge Peebles issued a Report and Recommendation, in which he recommended that this Court grant

Defendant's motion for judgment on the pleadings,¹ grant in part and deny in part Plaintiff's motion for judgment on the pleadings,² and remand this matter, pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings consistent with his report and recommendation. *See* Dkt. No. 17 at 18. The parties filed no objections to these recommendations.

"When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice." *Young v. Polizzi*, No. 9:16-CV-660, 2018 WL 3949942, *1 (N.D.N.Y. Aug. 16, 2018) (quoting *Ward v. Lee*, No. 9:16-CV-1224, 2018 WL 3574872, *1 (N.D.N.Y. July 25, 2018) (citation omitted)). "After conducting this review, 'the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the Magistrate Judge.'"" *Id.* (quotation omitted).

The Court has reviewed Magistrate Judge Peebles' January 7, 2022 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Peebles' January 7, 2022 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendant Commissioner's motion for judgment on the pleadings, *see* Dkt. No. 15, is **GRANTED**;³ and the Court further

¹ In her memorandum of law in support of her motion for judgment on the pleadings, Defendant Commissioner "acknowledge[d] that an error in the . . . ALJ's decision warrant[ed] remand for further proceedings." *See* Dkt. No. 15 at 2.

² In his memorandum of law in support of his motion for judgment on the pleadings, Plaintiff argued that the Court should remand this matter "with a directed finding of disability, solely for calculation of benefits." *See* Dkt. No. 10 at 14.

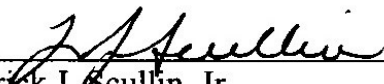
³ The Court grants Defendant Commissioner's motion for judgment on the pleadings because she acknowledged that remand for further proceedings was warranted.

ORDERS that Plaintiff's motion for judgment on the pleadings, *see* Dkt. No. 10, is **GRANTED in part** and **DENIED in part**⁴ and this matter is remanded, pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings consistent with Magistrate Judge Peebles' Report and Recommendation, *i.e.*, "to (1) solicit additional testimony from VE Festa regarding local and regional numbers associated with the job of call out operator, and (2) analyze and reconcile the inconsistency between the VE's testimony and the DOT, and, in the event the ALJ again chooses to rely on the DOT over the testimony of VE Festa regarding the job of surveillance system monitor, provide an explanation as to why that finding is supported by substantial evidence," *see* Dkt. No. 17, Report and Recommendation, at 18; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Plaintiff⁵ and close this case.

IT IS SO ORDERED.

Dated: March 30, 2022
Syracuse, New York


Frederick J. Scullin, Jr.
Senior United States District Judge

⁴ The Court grants Plaintiff's motion to the extent that he seeks remand for further proceedings; however, the Court denies his motion to the extent he seeks remand with a directed finding of disability and solely for the calculation of benefits.

⁵ The Court is entering judgment in favor of Plaintiff because he sought remand, in part, for further proceedings, and Defendant Commissioner acknowledged that remand was warranted because the ALJ had made an error in step five of his analysis.